

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

JAN 23 2007

COURT OF APPEALS  
DIVISION TWO

IN RE DEISHA D.

) 2 CA-JV 2006-0034

) DEPARTMENT A

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17487401

Honorable Virginia C. Kelly, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney  
By Dale Cardy

Tucson  
Attorneys for State

Ellinwood, Francis & Plowman, L.L.P.  
By D. Tyler Francis

Tucson  
Attorneys for Minor

H O W A R D, Presiding Judge.

¶1 Following an adjudication hearing, the juvenile court found the minor, Deisha D., born January 7, 1989, responsible for aggravated assault on a police officer, resisting arrest, and criminal damage and adjudicated her delinquent. The court placed Deisha, then

seventeen years old, on probation for three months. Deisha now claims that, because she was illegally detained and assaulted by a police officer, her delinquency adjudication should be vacated. We disagree and affirm her adjudication.

¶2 We will not disturb a juvenile court's adjudication order so long as reasonable evidence supports it. *See In re Maricopa County Juvenile Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). We view the evidence in the light most favorable to sustaining the delinquency adjudication. *See In re Julio L.*, 197 Ariz. 1, ¶ 6, 3 P.3d 383, 385 (2000). The evidence adduced at the adjudication hearing established that Deputy Sheriff Tory Schwartz responded to a 911 emergency call reporting a possible domestic violence incident between Deisha and her mother, Denise, that might have involved Deisha's starting a fire at their residence. Although Deisha and her mother denied to Schwartz that anything had happened, he was concerned that something had occurred because Denise's "facial muscles were shaking and her speech was quivering, even though she was trying to [make it] appear that there was not a situation . . . . She was extremely nervous and she had a smile on her face and that told [Schwartz] something was wrong." Schwartz testified that, because domestic violence victims often deny that anything has occurred, an officer must look at people's facial features or other physical responses to determine whether further investigation is required. After speaking with the 911 callers, Bonnie and Jay, Schwartz concluded he "needed to further investigate the situation." Because he believed Deisha was a suspect in a domestic violence incident, and because he was the only officer at the scene

“with four people [Deisha, Denise, and the two callers] yelling back and forth at each other” and no means to separate them, Schwartz told Deisha he was going to detain her in handcuffs while he conducted his investigation.

¶3 According to Schwartz, Deisha resisted his efforts to place handcuffs on her. At the same time, Denise was yelling at him, which led him to believe Denise might “have some type of physical contact” with him. As Schwartz and Deisha struggled, Deisha landed on the ground and began to kick Schwartz’s chest plate, kicks he believed were targeted at his groin area, while screaming at him as well. During the altercation, Schwartz’s speaker microphone was knocked off, and the holder for his cellular telephone was cracked. Deisha became so combative that Schwartz ultimately had to “pin” her to a stack of tires on the ground to prevent her from standing up. After Schwartz told Deisha she was under arrest for assaulting a police officer, she continued to resist his attempts to place her in handcuffs, which resulted in his using “more force and the compliance hold to spin her, to get her on her back.”

¶4 Jay testified that, although he could not remember the specific details of the incident, he did not recall Deisha kicking Schwartz, although he did remember that she had resisted being placed in handcuffs. Jay also testified that Schwartz had acted very “professionally” and that “he was trying to be calm about everything and he had different people to deal with.” Officer Scott Woodworth, who arrived to assist Schwartz, testified

that Deisha had been agitated and that “for the first several minutes [he] was there [Deisha] was doing nothing but swearing and yelling at people and yelling at her mom and Bonnie.”

¶5 Denise testified that she had been speaking with Bonnie on the telephone earlier that morning and had told her she was lighting the flame of her propane burner, which Bonnie had apparently interpreted to mean “there was a fire to be started [sic] . . . but [Denise] did not mean that anyone was starting a fire.” Denise testified that she had told Schwartz there was no fire or domestic violence in the house and that Deisha had panicked when Schwartz had grabbed her. Denise also said Deisha had not done anything to the officer.

¶6 Deisha testified that she had struggled with Schwartz because she had feared that Bonnie, who was coming toward her yelling profanities, was going to hit her. During the altercation with Schwartz, Deisha had panicked because he had pinned her down with her head “shoved” into a stack of tires on the ground. Contrary to Schwartz, Deisha testified that she had not kicked the officer and denied he had told her that he was only detaining her to conduct his investigation.

¶7 Deisha argues on appeal that, because there was no basis to arrest her and because she had not posed a flight or safety risk, Schwartz had had no reason to detain her, and any physical restraint was therefore illegal. *See In re Ilono H.*, 210 Ariz. 473, ¶ 13, 113 P.3d 696, 700 (App. 2005) (an individual is authorized to leave a consensual encounter with an officer). Deisha further argues that, because she was not under arrest, she had the right

to reasonably defend herself against Schwartz's use of undue force. Relying on *State v. Sanchez*, 145 Ariz. 313, 315, 701 P.2d 571, 573 (1985), Deisha also argues that the state used the circumstances to unfairly create the new offenses for which she was ultimately found responsible. *Sanchez*, however, is distinguishable because it involved a defendant who fled in a nonviolent manner from an attempted arrest, unlike this case in which Deisha was not initially under arrest and engaged in conduct that cannot be characterized as nonviolent. *Id.* at 319, 101 P.2d at 572.

¶8 At the conclusion of the adjudication hearing, the juvenile court made findings that addressed the primary issue before it: whether Schwartz's detention of Deisha to conduct his investigation had been reasonable and legal. The court found as follows:

[T]he testimony established certain facts that the officer . . . arrived at the family home having been called by someone to respond to a domestic altercation when he had received information that a fire may have been started.

A deputy responding to a domestic altercation is always walking into what is potentially a very dangerous situation, both for the people to whom the response is made and also [for] the deputy himself, and in this particular instance, walked into a situation that was exacerbated by having neighbors present.

Now what went on before the neighbors became involved is unclear, but the evidence that was presented suggests that the minor's mother had a conversation with them, that certain things were said that caused them to call 9-1-1 and to come to the property to remove the mother from the situation and the mother declined to go.

In any event, when the deputy arrived he observed a minor that he described as agitated and yelling at Bonnie, and

the Court adopts the testimony as credible that the mother was nervous as though she was hiding something, and he believed with her appearance that further investigation was needed.

The Court finds credible his testimony that he told the minor she was going to be detained and that it was reasonable for him to attempt to detain her at that time. His car didn't have a place to put her to keep her separate from her mother and she was the most upset, and it's reasonable to want to control the person who's the most upset when you're in that situation.

At that point she had not been arrested but detained, and there's an important legal distinction there. He was in uniform, in a marked patrol vehicle, so there's no question he was there in an official capacity, so according to Jay . . . , his conduct was professional from the time he was on the scene, and that was the lay witness who was there for the subsequent arrest.

¶9 It was for the juvenile court, not this court, to assess the credibility of the witnesses and to resolve any conflicts in their testimony. *See In re Andrew A.*, 203 Ariz. 585, ¶ 9, 58 P.3d 527, 529 (App. 2002). In *State v. Vasquez*, 167 Ariz. 352, 354, 807 P.2d 520, 522 (1991), a case involving the propriety of a pat-down search conducted during the investigation of a domestic violence incident, our supreme court noted that emergency calls related to domestic violence “commonly involve dangerous situations in which the possibility for physical harm or damage escalates rapidly.” The juvenile court here found that Schwartz’s detaining Deisha in order to safely conduct his investigation was reasonable under the circumstances. The evidence supports that conclusion, considering Deisha’s agitated state, the ongoing argument among the four individuals at the scene, the inherently dangerous circumstances frequently associated with domestic violence disputes, and the

nervous body language and facial expressions Denise had exhibited. *See State v. Aguirre*, 130 Ariz. 54, 56, 633 P.2d 1047, 1049 (App. 1981) (“When an officer is engaged in an investigation, he may detain a person under circumstances which would not justify an arrest.”). Moreover, in resisting Schwartz’s efforts to detain her, particularly after he had told her she was under arrest, Deisha’s own actions constituted the other offenses for which she was ultimately found responsible. *See* A.R.S. § 13-404(B)(2) (self-defense not justified in resisting arrest).

¶10 We affirm the juvenile court’s order adjudicating Deisha delinquent and its subsequent disposition order.

---

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

---

JOHN PELANDER, Chief Judge

---

GARYE L. VÁSQUEZ, Judge